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HOUSE BILL 478

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CRIMINAL LAW; MODIFYING THE CRIME OF DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR TO ALLOW THREE HOURS FOR THE ADMINISTRATION OF A CHEMICAL TEST TO DETERMINE ALCOHOL CONCENTRATION; CREATING A PER SE VIOLATION FOR DRIVING UNDER THE INFLUENCE OF CERTAIN CONTROLLED SUBSTANCES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-8-102 NMSA 1978 (being Laws 1953, Chapter 139, Section 54, as amended by Laws 2005, Chapter 241, Section 5 and by Laws 2005, Chapter 269, Section 5) is amended to read:

"66-8-102. PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--AGGRAVATED DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS--PENALTY.--

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1           A. It is unlawful for a person who is under the  
2 influence of intoxicating liquor to drive a vehicle within this  
3 state.

4           B. It is unlawful for a person who is under the  
5 influence of any drug to a degree that renders [~~him~~] the person  
6 incapable of safely driving a vehicle to drive a vehicle within  
7 this state.

8           C. It is unlawful for a person who is under the  
9 influence of any of the following controlled substances or any  
10 of their analogs to drive a vehicle within this state, unless  
11 the substance or its analog was obtained as authorized by the  
12 Controlled Substances Act:

13                   (1) a controlled substance or controlled  
14 substance analog included in Schedule I of the Controlled  
15 Substances Act;

16                   (2) coca leaves and any salt, compound,  
17 derivative or preparation of coca leaves, and any salt,  
18 compound, derivative or preparation thereof that is chemically  
19 equivalent or identical with any of these substances, but not  
20 including decocainized coca leaves or extractions that do not  
21 contain cocaine or ecgonine; and

22                   (3) methamphetamine, its salts, isomers and  
23 salts of isomers.

24           [~~C.~~] D. It is unlawful for:

25                   (1) a person [~~who~~] to drive a vehicle in this

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1 state if the person has an alcohol concentration of eight one  
2 hundredths or more in [~~his~~] the person's blood or breath [~~to~~  
3 ~~drive a vehicle within this state~~] within three hours of  
4 driving the vehicle and the alcohol concentration results from  
5 alcohol consumed before or while driving the vehicle; or

6 (2) a person [~~who~~] to drive a commercial motor  
7 vehicle in this state if the person has an alcohol  
8 concentration of four one hundredths or more in [~~his~~] the  
9 person's blood or breath [~~to drive a commercial motor vehicle~~  
10 ~~within this state~~] within three hours of driving and the  
11 alcohol concentration results from alcohol consumed before or  
12 while driving the commercial motor vehicle.

13 [~~D.~~] E. Aggravated driving while under the  
14 influence of intoxicating liquor or drugs consists of a person  
15 who:

16 (1) drives a vehicle in this state and has an  
17 alcohol concentration of sixteen one hundredths or more in  
18 [~~his~~] the person's blood or breath [~~while driving a vehicle~~  
19 ~~within this state~~] within three hours of driving the vehicle  
20 and the alcohol concentration results from alcohol consumed  
21 before or while driving the vehicle;

22 (2) has caused bodily injury to a human being  
23 as a result of the unlawful operation of a motor vehicle while  
24 driving under the influence of intoxicating liquor or drugs; or

25 (3) refused to submit to chemical testing, as

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1 provided for in the Implied Consent Act, and in the judgment of  
2 the court, based upon evidence of intoxication presented to the  
3 court, was under the influence of intoxicating liquor or drugs.

4 ~~[E-]~~ F. A person under first conviction pursuant to  
5 this section shall be punished, notwithstanding the provisions  
6 of Section 31-18-13 NMSA 1978, by imprisonment for not more  
7 than ninety days or by a fine of not more than five hundred  
8 dollars (\$500), or both; provided that if the sentence is  
9 suspended in whole or in part or deferred, the period of  
10 probation may extend beyond ninety days but shall not exceed  
11 one year. Upon a first conviction pursuant to this section, an  
12 offender shall be sentenced to not less than twenty-four hours  
13 and not more than forty-eight hours of community service. In  
14 addition, the offender may be required to pay a fine of three  
15 hundred dollars (\$300). The offender shall be ordered by the  
16 court to participate in and complete a screening program  
17 described in Subsection ~~[K]~~ L of this section and to attend a  
18 driver rehabilitation program for alcohol or drugs, also known  
19 as a "DWI school", approved by the bureau and also may be  
20 required to participate in other rehabilitative services as the  
21 court shall determine to be necessary. In addition to those  
22 penalties, when an offender commits aggravated driving while  
23 under the influence of intoxicating liquor or drugs, the  
24 offender shall be sentenced to not less than forty-eight  
25 consecutive hours in jail. If an offender fails to complete,

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1 within a time specified by the court, any community service,  
2 screening program, treatment program or DWI school ordered by  
3 the court or fails to comply with any other condition of  
4 probation, the offender shall be sentenced to not less than an  
5 additional forty-eight consecutive hours in jail. Any jail  
6 sentence imposed pursuant to this subsection for failure to  
7 complete, within a time specified by the court, any community  
8 service, screening program, treatment program or DWI school  
9 ordered by the court or for aggravated driving while under the  
10 influence of intoxicating liquor or drugs shall not be  
11 suspended, deferred or taken under advisement. On a first  
12 conviction pursuant to this section, any time spent in jail for  
13 the offense prior to the conviction for that offense shall be  
14 credited to any term of imprisonment fixed by the court. A  
15 deferred sentence pursuant to this subsection shall be  
16 considered a first conviction for the purpose of determining  
17 subsequent convictions.

18 ~~[F.]~~ G. A second or third conviction pursuant to  
19 this section shall be punished, notwithstanding the provisions  
20 of Section 31-18-13 NMSA 1978, by imprisonment for not more  
21 than three hundred sixty-four days or by a fine of not more  
22 than one thousand dollars (\$1,000), or both; provided that if  
23 the sentence is suspended in whole or in part, the period of  
24 probation may extend beyond one year but shall not exceed five  
25 years. Notwithstanding any provision of law to the contrary

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1 for suspension or deferment of execution of a sentence:

2 (1) upon a second conviction, an offender  
3 shall be sentenced to a jail term of not less than ninety-six  
4 consecutive hours, forty-eight hours of community service and a  
5 fine of five hundred dollars (\$500). In addition to those  
6 penalties, when an offender commits aggravated driving while  
7 under the influence of intoxicating liquor or drugs, the  
8 offender shall be sentenced to a jail term of not less than  
9 ninety-six consecutive hours. If an offender fails to  
10 complete, within a time specified by the court, any community  
11 service, screening program or treatment program ordered by the  
12 court, the offender shall be sentenced to not less than an  
13 additional seven consecutive days in jail. A penalty imposed  
14 pursuant to this paragraph shall not be suspended or deferred  
15 or taken under advisement; and

16 (2) upon a third conviction, an offender shall  
17 be sentenced to a jail term of not less than thirty consecutive  
18 days, ninety-six hours of community service and a fine of seven  
19 hundred fifty dollars (\$750). In addition to those penalties,  
20 when an offender commits aggravated driving while under the  
21 influence of intoxicating liquor or drugs, the offender shall  
22 be sentenced to a jail term of not less than sixty consecutive  
23 days. If an offender fails to complete, within a time  
24 specified by the court, any community service, screening  
25 program or treatment program ordered by the court, the offender

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1 shall be sentenced to not less than an additional sixty  
2 consecutive days in jail. A penalty imposed pursuant to this  
3 paragraph shall not be suspended or deferred or taken under  
4 advisement.

5 ~~[G.]~~ H. Upon a fourth conviction pursuant to this  
6 section, an offender is guilty of a fourth degree felony and,  
7 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
8 shall be sentenced to a term of imprisonment of eighteen  
9 months, six months of which shall not be suspended, deferred or  
10 taken under advisement.

11 ~~[H.]~~ I. Upon a fifth conviction pursuant to this  
12 section, an offender is guilty of a fourth degree felony and,  
13 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
14 shall be sentenced to a term of imprisonment of two years, one  
15 year of which shall not be suspended, deferred or taken under  
16 advisement.

17 ~~[I.]~~ J. Upon a sixth conviction pursuant to this  
18 section, an offender is guilty of a third degree felony and,  
19 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
20 shall be sentenced to a term of imprisonment of thirty months,  
21 eighteen months of which shall not be suspended, deferred or  
22 taken under advisement.

23 ~~[J.]~~ K. Upon a seventh or subsequent conviction  
24 pursuant to this section, an offender is guilty of a third  
25 degree felony and, notwithstanding the provisions of Section

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1 31-18-15 NMSA 1978, shall be sentenced to a term of  
2 imprisonment of three years, two years of which shall not be  
3 suspended, deferred or taken under advisement.

4 ~~[K-]~~ L. Upon any conviction pursuant to this  
5 section, an offender shall be required to participate in and  
6 complete, within a time specified by the court, an alcohol or  
7 drug abuse screening program approved by the department of  
8 finance and administration and, if necessary, a treatment  
9 program approved by the court. The requirement imposed  
10 pursuant to this subsection shall not be suspended, deferred or  
11 taken under advisement.

12 ~~[L-]~~ M. Upon a second or third conviction pursuant  
13 to this section, an offender shall be required to participate  
14 in and complete, within a time specified by the court:

15 (1) not less than a twenty-eight-day  
16 inpatient, residential or in-custody substance abuse treatment  
17 program approved by the court;

18 (2) not less than a ninety-day outpatient  
19 treatment program approved by the court;

20 (3) a drug court program approved by the  
21 court; or

22 (4) any other substance abuse treatment  
23 program approved by the court.

24 The requirement imposed pursuant to this subsection shall  
25 not be suspended, deferred or taken under advisement.

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1           ~~[M-]~~ N. Upon a felony conviction pursuant to this  
2 section, the corrections department shall provide substance  
3 abuse counseling and treatment to the offender in its custody.  
4 While the offender is on probation or parole under its  
5 supervision, the corrections department shall also provide  
6 substance abuse counseling and treatment to the offender or  
7 shall require the offender to obtain substance abuse counseling  
8 and treatment.

9           ~~[N-]~~ O. Upon a conviction pursuant to this section,  
10 an offender shall be required to obtain an ignition interlock  
11 license and have an ignition interlock device installed and  
12 operating on all motor vehicles driven by the offender,  
13 pursuant to rules adopted by the bureau. Unless determined by  
14 the sentencing court to be indigent, the offender shall pay all  
15 costs associated with having an ignition interlock device  
16 installed on the appropriate motor vehicles. The offender  
17 shall operate only those vehicles equipped with ignition  
18 interlock devices for:

- 19                           (1) a period of one year, for a first  
20 offender;
- 21                           (2) a period of two years, for a second  
22 conviction pursuant to this section;
- 23                           (3) a period of three years, for a third  
24 conviction pursuant to this section; or
- 25                           (4) the remainder of the offender's life, for

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1 a fourth or subsequent conviction pursuant to this section.

2 [Ø-] P. Five years from the date of conviction and  
3 every five years thereafter, a fourth or subsequent offender  
4 may apply to a district court for removal of the ignition  
5 interlock device requirement provided in this section and for  
6 restoration of a driver's license. A district court may, for  
7 good cause shown, remove the ignition interlock device  
8 requirement and order restoration of the license; provided that  
9 the offender has not been subsequently convicted of driving a  
10 motor vehicle while under the influence of intoxicating liquor  
11 or drugs. Good cause may include an alcohol screening and  
12 proof from the interlock vendor that the person has not had  
13 violations of the interlock device.

14 [P-] Q. In the case of a first, second or third  
15 offense under this section, the magistrate court has concurrent  
16 jurisdiction with district courts to try the offender.

17 [Ø-] R. A conviction pursuant to a municipal or  
18 county ordinance in New Mexico or a law of any other  
19 jurisdiction, territory or possession of the United States or  
20 of a tribe, when that ordinance or law is equivalent to New  
21 Mexico law for driving while under the influence of  
22 intoxicating liquor or drugs, and prescribes penalties for  
23 driving while under the influence of intoxicating liquor or  
24 drugs, shall be deemed to be a conviction pursuant to this  
25 section for purposes of determining whether a conviction is a

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1 second or subsequent conviction.

2 [R-] S. In addition to any other fine or fee that  
3 may be imposed pursuant to the conviction or other disposition  
4 of the offense under this section, the court may order the  
5 offender to pay the costs of any court-ordered screening and  
6 treatment programs.

7 [S-] T. With respect to this section and  
8 notwithstanding any provision of law to the contrary, if an  
9 offender's sentence was suspended or deferred in whole or in  
10 part and the offender violates any condition of probation, the  
11 court may impose any sentence that the court could have  
12 originally imposed and credit shall not be given for time  
13 served by the offender on probation.

14 [F-] U. As used in this section:

15 (1) "bodily injury" means an injury to a  
16 person that is not likely to cause death or great bodily harm  
17 to the person, but does cause painful temporary disfigurement  
18 or temporary loss or impairment of the functions of any member  
19 or organ of the person's body;

20 (2) "commercial motor vehicle" means a motor  
21 vehicle or combination of motor vehicles used in commerce to  
22 transport passengers or property if the motor vehicle:

23 (a) has a gross combination weight  
24 rating of more than twenty-six thousand pounds inclusive of a  
25 towed unit with a gross vehicle weight rating of more than ten

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1 thousand pounds;

2 (b) has a gross vehicle weight rating of  
3 more than twenty-six thousand pounds;

4 (c) is designed to transport sixteen or  
5 more passengers, including the driver; or

6 (d) is of any size and is used in the  
7 transportation of hazardous materials, which requires the motor  
8 vehicle to be placarded under applicable law; and

9 (3) "conviction" means an adjudication of  
10 guilt and does not include imposition of a sentence."

11 Section 2. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2007.